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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,949	09/18/2003	Uwe Schneider	9365	6525

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THE PROCTER & GAMBLE COMPANY
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EXAMINER

MUSSER, BARBARA J

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/665,949	Applicant(s) SCHNEIDER ET AL.	
	Examiner Barbara J. Musser	Art Unit 1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
 4a) Of the above claim(s) 3,6,7 and 16-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5 and 8-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-16, drawn to a method of making an edge fold, classified in class 156, subclass 204.
 - II. Claim 17, drawn to an apparatus for making an edge fold, classified in class 223, subclass 37.
 - III. Claims 18-21, drawn to a diaper or similar absorbent article, classified in class 604, subclass 385.01.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process can be performed by folding by hand.

Inventions I and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the absorbent article can be made by another process such as applying a pre-activated elastic to the longitudinal edges of the diaper.

Inventions II and III are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case the product can be made by a different apparatus such as by hand.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

2. This application contains claims directed to the following patentably distinct species: A: forming the diaper with cutting and species B: forming the diaper without cutting. There are additional groups with species 1: cutting before folding and species 2: cutting after bonding; a group with species X: applying heat before activating and Y: applying heat during activation, and a group with species I: a substantially linear edge, and species II: a substantially curved edge. The species are independent or distinct because they cannot be performed together.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim

is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

During a telephone conversation with Matthew Fitzgerald on January 4 and 9, 2006, a provisional election was made with traverse to prosecute the invention of group I and species A, 1, X, and II, claims 1, 2, 4, 5, and 8-15. Affirmation of this election must be made by applicant in replying to this Office action. Claims 3, 6, 7, and 16-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 4, it is unclear what is included in activating since claim 4 indicates that heating is part of the activating process while claim 5 indicates the activating occurs after the heating. It is unclear if the heat is applied to the entire garment or only to the longitudinal edges.

Regarding claim 5, it is unclear if only the longitudinal edges are activated or if there is other activatable material in the garment as claim 5 indicates the garment is activated.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 4, 8, and 10-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Popp et al.(U.S Publication 2002/0087139).

Popp et al. discloses a method of forming a diaper by folding the longitudinal edge of a diaper, bonding the edge to the diaper,[0051] and heating and shrinking the bonded edge[0064](activating it).

Regarding claim 4, heat is applied during the activation.[0064]

Regarding claim 8, the folding creates a substantially curvilinear edge.[0050]

Regarding claim 10, the bonding can occur via ultrasonic bonding.[0065]

Regarding claims 11 and 12, the article can be a disposable diaper.[0047]

Regarding claim 13, since the elastic(59) is along the portion of the longitudinal edge between the side panels, the activation of said elastic would be performed along that same portion of the longitudinal edge.(Figure 2)

Regarding claim 14, the folding occurs at least between the side panels.(Figure 2)

Regarding claim 15, the bonding occurs between the side panels.(Figure 2)

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Popp et al. as applied to claim 1 above and further in view of Sabee(U.S. Patent 3,509,881).

The references cited above do not disclose cutting a portion of the diaper prior to folding the edge. Sabee discloses cutting the longitudinal edges of the diaper and then folding them.(Figure 3, Abstract) It would have been obvious to one of ordinary skill in the art at the time the invention was made to cut the longitudinal edges of the diaper of Popp et al. prior to folding them over since this is a well-known alternative as shown for

example by Sabee and since this would prevent the region between the folded and unfolded sections from forming pockets which could collect material or cause discomfort during use.

9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Popp et al. as applied to claim 1 above, and further in view of Buell et al.(U.S. Patent 5,674,216).

Popp et al. does not disclose the activating being a step of creating gathers in the garment edge using teeth on a tool. Buell et al. discloses a method of forming elastic regions in a diaper by passing the garment through a pair of rollers having cooperating teeth on two rolls such that gathers are formed.(Figures 5, 8B, and 9) It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the elastic in the garment of Pop et al. rather than applying preformed elastic since preformed elastics can slip and slide or roll over during use resulting in an uncomfortable fit.(Col. 1, ll. 38-67) Since the gathers are formed by the corrugations on the rollers, the distance between the corrugations on the roller would determine the distance between the gathers(pitch).

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Popp et al. as applied to claim 4 above, and further in view of Buell et al., Joest et al.(U.S. Patent 5,830,821), and Melius(U.S. Publication 2004/044322A1)

Popp et al. does not disclose the activating being a step of creating gathers in the garment edge using teeth on a tool. Buell et al. discloses a method of forming elastic regions in a diaper by passing the garment through a pair of rollers having cooperating

teeth on two rolls such that gathers are formed by stretching.(Figures 5, 8B, and 9; Col. 9, ll. 55-60) It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the elastic in the garment of Popp et al. rather than applying preformed elastic since preformed elastics can slip and slide or roll over during use resulting in an uncomfortable fit.(Col. 1, ll. 38-67) Since the gathers are formed by the corrugations on the rollers, the distance between the corrugations on the roller would determine the distance between the gathers(pitch).

The references cited above do not disclose heating the edges of the garment prior to stretching it to form the gathers. Joest et al. discloses heating an article prior to stretching it.(Figure 1) Melius discloses forming an absorbent article wherein stretching a hot web can enhance the stretching.[0017] It would have been obvious to one of ordinary skill in the art at the time the invention was made to heat the garment of Joest et al. before corrugating(stretching) the edges since it is well-known and conventional in the arts to heat prior to stretching since this allows easier stretching as shown for example by Joest et al.(Figure 1) and as taught by Melius which teaches that stretching a hot web enhances the stretching process when forming elastic in an absorbent article.[0017]

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara J. Musser whose telephone number is (571)

272-1222. The examiner can normally be reached on Monday-Thursday; alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571)-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



BJM



SAM CHUAN YAO
PRIMARY EXAMINER